

## RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5461-14T4

L.E.B.,

Plaintiff-Respondent,

v.

R.T.B.,

Defendant-Appellant.

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Submitted December 20, 2016 — Decided January 17, 2017

Before Judges Fasciale and Kennedy.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Union County,  
Docket No. FV-20-1438-15.

Evan F. Nappen, Attorney at Law, P.C. attorneys  
for appellant (Jeffrey A. Skiendziul, on the  
brief).

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from a June 24, 2015 final restraining  
order (FRO) entered pursuant to the Prevention of Domestic Violence  
Act (PDVA), N.J.S.A. 2C:25-17 to -35, in favor of plaintiff, his  
then wife. We affirm.

The FRO judge conducted a hearing and took testimony from the parties, defendant's friend, and two police officers. The judge listened to recordings of defendant uttering profanities and repeatedly being verbally abusive to plaintiff. He found defendant committed the predicate acts of harassment, N.J.S.A. 2C:25-19(a)(13), and stalking, N.J.S.A. 2C:25-19(a)(14). He also concluded that the FRO was necessary to protect plaintiff from further acts of domestic violence.

On appeal, defendant argues plaintiff failed to produce sufficient evidence warranting the issuance of the FRO. He contends the judge erred by finding that he harassed and stalked plaintiff, and even if he had done so, that the FRO was unnecessary to protect plaintiff.

After careful consideration of the record, we are satisfied that plaintiff's arguments lack sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E). We add the following remarks.

In a domestic violence case, we accord substantial deference to a Family Part judge's findings, which "are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 412 (1998). Deference is particularly warranted when much of the evidence is testimonial and implicates credibility determinations. Ibid. Here, the judge

did not believe defendant's testimony. Thus, we do not disturb the judge's factual findings and legal conclusions, unless we are "'convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)).

Domestic violence occurs when an adult or emancipated minor commits a predicate act upon a person protected by PDVA. N.J.S.A. 2C:25-19(a). A judge must engage in a two-step analysis when determining whether to grant a final restraining order under the PDVA. Silver v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). First, the judge must be satisfied, by a preponderance of the credible evidence, the plaintiff has proven the occurrence of one or more of the predicate acts enumerated in N.J.S.A. 2C:25-19(a). Ibid.; see also N.J.S.A. 2C:25-29(a) (providing an FRO may only be granted "after a finding or an admission is made that an act of domestic violence was committed . . ."); R. 5:7A(d) (mirroring the language of N.J.S.A. 2C:25-29(a)). Only if the plaintiff first proves one of the predicate acts does the judge then consider whether an FRO is warranted to protect the plaintiff. Silver, supra, 387 N.J. Super. at 126; see also J.D. v. M.D.F., 207 N.J. 458, 476 (2011) (quoting N.J.S.A. 2C:25-29(b))

(explaining the judge must find "relief is necessary to prevent further abuse").

A person is guilty of harassment where, "with purpose to harass another," he or she:

- a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

[N.J.S.A. 2C:33-4(a)-(c).]

Harassment requires that the defendant act with the purpose of harassing the victim. J.D., supra, 207 N.J. at 486. A judge may use "[c]ommon sense and experience" when determining a defendant's intent. State v. Hoffman, 149 N.J. 564, 577 (1997).

There is adequate substantial evidence in the record to support the judge's finding that defendant harassed plaintiff. The judge found defendant's actions were continuous and done with the purpose to annoy plaintiff. Plaintiff repeatedly kept quiet to avoid confrontations with defendant. The judge referred to the volume of defendant's verbal abuse, and the demeaning manner in

which defendant spoke to her, especially in front of young children.

Stalking occurs when someone "purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his [or her] safety or the safety of a third person or suffer other emotional distress." N.J.S.A. 2C:12-10(b). The statutory prohibition is against conduct "that would cause such fear in an objectively reasonable person." State v. Gandhi, 201 N.J. 161, 187 (2010). A "course of conduct" is defined as, "repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person." N.J.S.A. 2C:12-10(a)(1).

There is adequate substantial evidence in the record to support the judge's finding that defendant stalked plaintiff. Defendant followed plaintiff at least two times. On one occasion, plaintiff drove to the police station immediately after she had told defendant she wanted a divorce. In response, defendant followed her to headquarters, ran a traffic light, and was "right at her heels" as she traveled faster than the speed limit with two

young children in the vehicle. On the other occasion, defendant turned on a tracking device to monitor plaintiff's whereabouts.

As to the need for the FRO, the judge concluded the evidence was overwhelming. At times, plaintiff would barricade herself inside her bedroom. At the hearing, plaintiff played recordings of her gasping for breath and being afraid. The judge found that defendant instilled fear into plaintiff, and that defendant suffered from anger management issues warranting therapy, a psychiatric examination, and therapeutic visitation with his son. We have no reason to second-guess the judge's determination that the FRO was necessary to protect plaintiff from defendant.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION